only because he was not one of their English enemies in days when they had few English friends.

A few slight errors in this volume require correction. Page 190: "King *Charles* was succeeded by his son Lothair," should read, "King *Louis*"; — Louis d'Outremer. Mr. Freeman comes near treating Mr. Kington as unfairly as he does the Emperor Napoleon. Page 297: "In 1210 Frederick was elected king; two years later, Otto, in Mr. [Kington] Oliphant's words, 'rushed on his doom.'" The words are indeed Mr. Kington's, but the date belongs to Mr. Freeman. Frederick II. had the ill fortune to be three times elected king, but never in the year 1210. The election here meant is that of 1212, from which Frederick dated the years of his reign. Again, p. 186: "In 888 Charles the Fat was deposed," and "in 963 Otto the Great finally annexed the Roman Empire and the Italian Kingdom to his own Teutonic crown." Charles the Fat was deposed in 887, and setting aside the fact that Otto did not "finally" annex the Italian Kingdom to his Teutonic crown, but that the Italians continued after him to dispose of their own crown as in the case of Ardoin of Ivrea in 1002, the date itself is incorrect. Otto the Great was crowned Emperor on the 2d of February, 962.

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4. —1. *Village Communities in the East and West.* Six Lectures delivered at Oxford by Henry Sumner Maine, Corpus Professor of Jurisprudence in the University. London: John Murray. 1871. pp. 226.
2. *Agricultural Communities of the Middle Ages.* From the German of E. Nasse. Translated by H. A. Ouvry. Published by the Cobden Club. London: Macmillan & Co. 1871. pp. 100.
3. *Die Altdeutsche Reichs-und Gerichtsverfassung.* Von Dr. Rudolph Sohm, ord. Professor an der Universität Freiburg i. Br. Erster Band. Die Fränkische Reichs-und Gerichtsverfassung. Weimar: Hermann Böhlau. 1871. pp. 588.

There are many indications that a new historical school must soon develop itself in England, with new methods and with a deeper basis than has yet been required of English historical students. It is clear that the old school is practically worn out, and in spite of various false starts and much premature theorizing, that the new one sooner or later will run its course and triumph. It is now some years since Sir Henry Maine in his "Ancient Law" sketched out with great breadth and boldness one principal path which the new student would

be obliged to follow; and as Sir Henry dealt with legal conceptions, so a French writer whose work has been translated into English and widely read — M. de Coulanges in his *Cité Antique* — has followed a somewhat similar method with forms of religious worship. Sir John Lubbock has in his turn struck into a promising path, though in a very slipshod manner, and has traced society back, on sound critical principles, to a very early stage, in which war figures as the great civilizer. All these are, however, only tentative sketches, outlines of a vast scheme which must inevitably lead to nothing less than the entire reconstruction of historical literature.

Sir Henry Maine's six lectures delivered at Oxford last year aim at illustrating one corner of this immense canvas. Having laid down the principle that the family was the great source of personal law, and that groups of families cultivating land in common — the village communities of undeveloped society — are the great source of proprietary law, he proceeds with a sound sense of critical method, to show what these village communities are, and he describes the system as it actually exists in India, where it was a part of his duty as a judge to recognize and study it. The same work, so far as concerns the traces of the same communal system in Germany, has been elaborately done by a school of German jurists of whom Von Maurer is perhaps the most eminent.

The mere fact that English historians have always known and recognized the early existence of a communal system, does not prevent this new movement from shaking the foundations, if there were any, of the old historical method. Practically neither lawyers nor historians in England ever succeeded in getting beyond the manor as the source of land law. They stopped at William the Conqueror and what they called the feudal system, and assumed that there was here a break of legal and historical continuity. If they were not too thoroughly convinced both of the merits of English law, and of the merits of English historians, to feel any slight sense of mortification, one would suppose that this translation of Nasse's Mediæval Communities would be likely to stimulate it. Here is a plodding, obscure, and far from lively German, who collects English materials which have been lying under the eyes of Englishmen for six centuries undisturbed, and by means of these he puts a new face on English history and law. That all his facts were well known before he wrote, does not alter the case at all. No English lawyer or historian has ever used them with any effective comprehension of their value. The Englishman has accepted feudal law; he has, very unwillingly but at last frankly, accepted Roman law as modifying feudal law; but he still does battle

with desperate energy against the idea that Germans as such, before they were either feudalized or Romanized, had an actual system of personal and proprietary law of their own, a system as elaborate, as fixed, and as firmly administered by competent and regular courts, as ever was needed to guarantee security of person and property in a simply constructed, agricultural community. From these laws and this society, not from Roman laws or William the Conqueror's brain, England, with her common-law and constitutional system, developed; and from similar laws by a similar process with a similar result, Rome had developed before her; as every society which is based on the principle of contract always has and always must have developed.

English literature has yet to learn that these points of historical science have already been worked out into formulas by German minds, and that there is a mass, one may even say a library, of German books, all of which bear more or less directly on the history of England, and none or few of which have ever been utilized for the explanation of that history. The latest and in some respects the most remarkable of all these works is that of Professor Sohm of Freiburg. Since the publication of Professor Waitz's "Constitutional History" some thirty years ago, although there has been a great amount of active investigation in this field, only two works have achieved any very distinguished success. The first of these was the "History of Benefices" or the origin of Feudalism, by Dr. Paul Roth, Professor at Marburg, in which some of Waitz's theories were roughly and decisively upset. This work dealt principally with the military side of the German constitution down to the tenth century. The second is the work of Dr. Rudolph Sohm, which concerns more immediately the early German system of administering justice, and which has appeared so recently that its exact place in literature cannot yet, at least at this distance, be precisely fixed. To any one who has struggled with early feudal institutions as expounded by writers like Hallam and Guizot, or even by Eichhorn and Waitz, these books of Roth and Sohm produce somewhat the same impression as flashes of lightning in an extremely dark night.

The question cannot but rise in an English reader's mind, why no such works as these, equally thorough and equally broad, have ever been produced in England. Certainly it is not because the Germans had any advantages at the outset, for English historical literature was vastly in advance of the German until a comparatively recent time. We believe that there is an obvious explanation of this difficulty if it is looked at as a purely professional question. These German works are the works of jurists rather than of historians, and there never has been a time when the training of an English lawyer admitted of the

possibility of such speculations. No doubt this was an advantage in some respects. It implied that English law had maintained itself in a course of development little disturbed from without; that it was jealous of foreign ideas and external influence; that it frowned upon unpractical theorizing. An Austin was a solitary and not a welcome apparition to the English bar. Perhaps it was well for the common law that it should have grown in this practical and healthy way; that it should have drawn assistance from the civil law only by stealth, and without acknowledgment of its thefts; that it should have created a close corporation of lawyers who knew nothing but law, and only the common law at that. But for history the disaster was enormous. In proportion as Englishmen have made themselves good lawyers they have become bad historians. The whole fabric of the common law rests on a quantity of assumptions which as history are destitute of any sound basis of fact, and these assumptions have decisively influenced the ideas even of those English historians who, technically speaking, knew no law. Just as in the Middle Ages history was appropriated by monks, who wrote with minds controlled and permeated by religious assumptions which color and distort their works from beginning to end, and which have now to be carefully strained away before a residuum of fact can be reached, so in later times the study of history in England, so far as it was legal, — and perhaps the most practical part of history is the development of law, — fell into the hands of a class of men whose purely historical knowledge and faculty for historical criticism were of the most limited kind, and whose minds were hopelessly imbued with common-law fictions. In Germany the case was different. German law may be very inferior as a science to English law; it may have been warped and biassed by its connection with Rome, and its development may not have been spontaneous and healthy. But the German lawyer was also a jurist, and his study of codes, rendered necessary as it was by his situation, has forced him to develop a faculty for comparison and criticism, for minute analysis and sweeping generalization, such as no Englishman, except perhaps Austin and Maine, has ever dared to conceive. It is evident that this state of things is now rapidly passing away in England, and it may be that in the process of overthrow the English law will suffer; but even if this prove to be the case, some compensation may be drawn from the chance that English critical literature will spring into new life, and that English history will perhaps at last be written.